

Work Permits in Turkey: An Attempt to Centralize the Process

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The Turkish Parliament has enacted Law No. 4817 regarding Work Permits for Foreigners (the "Law"). Although the Law was published in the Official Gazette on 6 March 2003, it will only become effective six months after its publication (i.e., 6 September 2003).

The current system, pursuant to which foreigners are granted work permits from various authorities, causes considerable delay in practice. The Turkish Parliament enacted the Law in order to issue such permits through one authority and as a part of its international commitments to enable foreigners to work more liberally in Turkey.

The Law aims to ensure that the work permit process of Turkey reaches international standards, in particular, EU standards. Currently, 71 laws and 10 statutory decrees, directly or indirectly, regulate work permits for foreigners. The aforesaid legislation authorizes a different governmental authority for each particular application and, in certain laws, even the relevant authority is not clear. The Law, by amending certain other laws, authorizes only one authority (i.e., the Ministry of Labor and Social Security Affairs (the "Ministry")) for the work permit process. In short, the Law will help in (i) combining various procedures provided by varying legislations into one authority; (ii) enabling the supervision of permits by one authority; (iii) preventing illegal employment of foreigners (by monetary fines); (iv) reducing bureaucratic transactions; and (v) forming a data bank.

Although the Law authorizes only one authority (the Ministry) for the issuance of work permits, certain legal entities shall continue to issue work permits under specific laws. The following entities shall continue to be the authorized bodies for issuance of work permits in their particular areas:

- Prime Ministry (for accountants and financial advisors)
- Ministry of Health
- Ministry of National Defense
- High Institute of Education (YÖK)

To Whom Shall the Law Apply?

The Law covers (i) foreigners working independently (i.e., working for himself) or employed by an individual or a legal entity; (ii) foreigners trained by an employer; and (iii) individuals and legal entities employing foreigners. The Law excludes (a) foreigners who are Turkish citizens by birth but have lost their citizenship by a Council of Ministers' Decree; (b) foreign press members working in accordance with the press law; (c) foreigners employed or permitted to work by Ministries and state economic enterprises pursuant to specific laws; and (d) foreigners exempted from work permit requirements in accordance with the reciprocity rule, provisions of international law or European Union legislation.

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The Law also reserves the rights granted to foreigners by bilateral and multilateral treaties to which Turkey is a party.

Issuance of A Work Permit and Its Terms

Foreigners within the scope of this Law are required to obtain a work permit prior to their employment in Turkey. As an exception, due to national requirements and force majeure events, work permits can be issued upon the commencement of employment provided that Ministry approval shall be obtained and the employment period does not exceed one month.

Work permits may be limited to a certain period, certain sector, certain profession or certain geographical area as required by developments in the market and employment conditions.

Certain persons listed in the Law shall be entitled to obtain a work permit without being subject to the terms provided in the Law. The Ministry may, upon request and in order to clarify a foreigner's situation, issue an exemption certificate to a foreigner who is exempt from obtaining a work permit.

A foreigner residing abroad can submit his work permit application to the Turkish Consulate in his country. The consulate shall send the application directly to the Ministry and the Ministry shall issue a preliminary work permit. The preliminary work permit shall become a valid work permit only upon the foreigner obtaining his entrance visa and resident permit.

An application for a work permit or for extension of a work permit, as the case may be, may be submitted directly to the Ministry by the foreigner holding the resident permit in Turkey or his employer. The Ministry shall, upon obtaining the opinions of the relevant authorities, approve the application at the latest within 90 (ninety) days upon application.

The Ministry may issue the following work permits: (i) *work permit with a term* of 1 (one) year which may be extended under certain conditions; (ii) *unlimited work permit* to a foreigner who has resided in Turkey legally and continuously for a minimum period of 8 (eight) years and worked legally for 6 (six) years; or (iii) *independent work permit* to a foreigner working independently provided that such foreigner shall have resided in Turkey legally and continuously for a minimum period of 5 (five) years.

Annual vacations, absences due to work accidents, occupational illnesses, maternity leaves, temporary loss of ability to work, and the unemployment period covered by unemployment insurance shall all be deemed to constitute part of the legal working period. Time spent abroad, which shall not exceed six months, does not interfere with the above stated working period but such period spent abroad shall not be considered as a working period.

A foreigner working independently and an employer employing a foreigner are obliged to notify such situation to the Ministry within 15 (fifteen) days following the commencement and termination dates of the foreigner's employment.

Rejection and Termination

The Ministry is authorized to reject an application for issuance or extension of a work permit if:

- (i) the market and development in employment conditions is not sufficient for issuance of a work permit;

- (ii) it is discovered within four weeks that another person residing in Turkey with the same qualifications qualifies for the job;
- (iii) the foreigner does not hold a valid resident permit;
- (iv) the foreigner, whose application was rejected, submits another application for the same workplace, operation or profession within 1 (one) year upon rejection; and
- (v) the employment of the foreigner creates a threat to national security, public order, public morality or public health.

In the event a foreigner works in violation of the limitation requirements (i.e., limitation to a certain period, certain sector, certain profession or certain geographical area) or provisions of other laws or if one of the above stated conditions exists or, if it is further determined that the foreigner or employer makes a false statement during application, the Ministry shall have the authority to cancel the work permit.

The work permit shall also terminate upon:

- (i) expiration;
- (ii) the foreigner's resident permit becoming invalid for any reason (including non-extension of its duration);
- (iii) expiration of the foreigner's passport; or
- (iv) the foreigner's stay abroad for a continuous period of more than 6 (six) months for reasons other than force majeure events.

Penalties

The Ministry shall have the authority to inspect the work sites in order to control their compliance with the Law. The following conditions shall be subject to the fines stated in the Law (between TL 250 million² and TL 2.5 billion³ per foreigner): (i) A foreigner working independently and an employer who does not comply with the notification requirements stated above; (ii) a foreigner employed by an employer without a work permit; (iii) those who employ a foreigner without a work permit; and (iv) a foreigner working independently without a work permit. If the above stated activities are repeated, the fines shall be doubled.

Legal Remedies

The Ministry shall submit the necessary notifications with respect to the cancellation or rejection of issuance or extension of a work permit in accordance with legal notification requirements. The applicant shall have the right to object to the decision of the Ministry within 30 (thirty) days following the notification. If the Ministry does not accept such objection, the applicant's right to file an administrative lawsuit is reserved.

Status of the Work Permits Obtained or Applied For Prior to the Law

Work permits obtained prior to the effectiveness of the Law shall be valid until their expiration date unless terminated by the Ministry in accordance with the Law.

Public institutions and enterprises that granted work permits prior to the effectiveness of the Law shall provide the Ministry with information regarding those permits within 90 (ninety) days upon the effectiveness of the Law.

² Approximately USD 150.

³ Approximately USD 1500.

Applications made prior to the effectiveness of the Law will be finalized by the relevant government authority authorized prior to the effectiveness of the Law and such government authority shall submit the relevant information to the Ministry within 30 (thirty) days following the issuance of the work permit.

Implementing Regulations and Practices

It appears that upon obtaining the opinions of the relevant governmental authorities, an implementing regulation, which will govern the principles and procedures regarding the issues governed by the Law, shall be enacted within 6 (six) months following the publication of the Law. The Law also stipulates that the Ministry shall, together with the Treasury Undersecretariat, issue a separate regulation to govern the issuance of work permits to foreigners that will be employed by foreign capital companies (i.e., companies established in accordance with Foreign Capital Law No. 6224).

Further, by an amendment to Statutory Decree No. 190 governing the general employment and procedures of state personnel, the Ministry will establish a Working General Directorate to handle work permit issues. This provision of the Law is the only provision that shall become effective upon its publication, therefore, the Directorate may be established at any time after the publication of the Law.

CONCLUSION

Although the Law aims to liberalize and centralize the work permit process of foreigners we believe that such aim falls short. The Law, in general, seems to establish such a structure with essential provisions but, as mentioned above, certain administrations are still authorized to issue work permits in their areas. The process is just as complicated. However, we believe that the final approach of the Turkish Government has still not been formulated. Consequently, the whole picture will not be clear until the issuance of the implementing regulations mentioned therein and the implementation of the Law together with such regulations. ⊕